

§41.5

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of this title as a result of a late filing may be filed pursuant to §1.137 of this title.

(2) A late filing that does not result in an application becoming abandoned or a reexamination proceeding becoming terminated under §§1.550(d) or 1.957(b) or limited under §1.957(c) of this title may be excused upon a showing of excusable neglect or a Board determination that consideration on the merits would be in the interests of justice.

(c) *Scope.* Except to the extent provided in this part, this section governs proceedings before the Board, but does not apply to filings related to Board proceedings before or after the Board has jurisdiction (§41.35), such as:

(1) Extensions during prosecution (*see* §1.136 of this title).

(2) Filing of a notice of appeal and an appeal brief (*see* §§41.31(c) and 41.37(c)).

(3) Seeking judicial review (*see* §§1.301 to 1.304 of this title).

§41.5 Counsel.

While the Board has jurisdiction:

(a) *Appearance pro hac vice.* The Board may authorize a person other than a registered practitioner to appear as counsel in a specific proceeding.

(b) *Disqualification.* (1) The Board may disqualify counsel in a specific proceeding after notice and an opportunity to be heard.

(2) A decision to disqualify is not final for the purposes of judicial review until certified by the Chief Administrative Patent Judge.

(c) *Withdrawal.* Counsel may not withdraw from a proceeding before the Board unless the Board authorizes such withdrawal. *See* §10.40 of this title regarding conditions for withdrawal.

(d) *Procedure.* The Board may institute a proceeding under this section on its own or a party in a contested case may request relief under this section.

(e) *Referral to the Director of Enrollment and Discipline.* Possible violations of the disciplinary rules in part 10 of this title may be referred to the Office of Enrollment and Discipline for investigation. *See* §10.131 of this title.

§41.6 Public availability of Board records.

(a) *Publication*—(1) *Generally.* Any Board action is available for public inspection without a party's permission if rendered in a file open to the public pursuant to §1.11 of this title or in an application that has been published in

accordance with §§1.211 to 1.221 of this title. The Office may independently publish any Board action that is available for public inspection.

(2) *Determination of special circumstances.* Any Board action not publishable under paragraph (a)(1) of this section may be published or made available for public inspection if the Director believes that special circumstances warrant publication and a party does not, within two months after being notified of the intention to make the action public, object in writing on the ground that the action discloses the objecting party's trade secret or other confidential information and states with specificity that such information is not otherwise publicly available. If the action discloses such information, the party shall identify the deletions in the text of the action considered necessary to protect the information. If the affected party considers that the entire action must be withheld from the public to protect such information, the party must explain why. The party will be given time, not less than twenty days, to request reconsideration and seek court review before any contested portion of the action is made public over its objection.

(b) *Record of proceeding.* (1) The record of a Board proceeding is available to the public unless a patent application not otherwise available to the public is involved.

(2) Notwithstanding paragraph (b)(1) of this section, after a final Board action in or judgment in a Board proceeding, the record of the Board proceeding will be made available to the public if any involved file is or becomes open to the public under §1.11 of this title or an involved application is or becomes published under §§1.211 to 1.221 of this title.

§41.7 Management of the record.

(a) The Board may expunge any paper directed to a Board proceeding, or filed while an application or patent is under the jurisdiction of the Board, that is not authorized under this part or in a Board order, or that is filed contrary to a Board order.